PUBLIC PROSECUTOR v. RAMASAMY.

[O. Cr. J. (Callow J.) February 3, 1948]

[Malacca — Criminal Trial No. 3 of 1948]

Criminal Procedure — Confession — Whether confession was free and voluntary — Confession made as a result of questioning.

In this case it was argued that the confession made by the accused to the Assistant Manager of the estate where he was working was inadmissible in evidence as it was not free and voluntary and was made in answer to repeated questioning by the Assistant Manager. The evidence showed that the accused at first denied the crime alleged against him but after considerable questioning, the phrase "Answer my questions" being repeatedly used, the accused confessed to the crime.

Held: the confession was not free and voluntary and was therefore inadmissible.

Cases referred to:—

(1) *R. v. Cowell* 27 Cr. App. R. 191.

(2) *Murugan v. Public Prosecutor* 5 F.M.S.L.R. 108.

(3) *R. v. Thomas* 7 C. & P. 345.

CRIMINAL TRIAL.

J. N. Kilner (D. P. P.) for the Public Prosecutor.

C. S. Jayaswal for the accused.

Cur. Adv. Vult.

Callow J.: — The accused is charged with rape at the Gan Hong Ho Estate, Jasin, on the 16th October, 1947.

On the following morning he was called before the Assistant Manager of the Estate Mr. J. Anderson and questioned: The point to be decided is whether the answers of the accused to those questions are admissible in evidence.

It was at the proper stage of the evidence given by Mr. Anderson that Mr. Jayaswal for the accused raised the objection, and the Jury withdrew for the argument.

I therefore heard Mr. Anderson further, followed by the conductor Mr. Gurusamy who assisted in interpretation, and by the accused himself (*R. v. Cowell*[1]). The substance of the testimony of Messrs. Anderson and Gurusamy was that without threat or inducement the accused confessed, whereas the accused denied making any admission or confession.

Mr. Kilner for the Crown, and Mr. Jayaswal for the accused agreed that Mr. Anderson was, in relation to the accused, a person in authority; the case of *Murugan v. Public Prosecutor*[2] support this. The contentious point was whether any threat or inducement was in fact made, and whether the circumstances were such as to satisfy the Court that the admissions by the accused were free and voluntary.

I therefore addressed myself most carefully to evidence as to the manner and mode of the interrogation of the accused, for it is clear that the interview took the form of question and answer; there was no spontaneous confession. I had in mind the passage in *Woodroffe on Evidence*, 9th Edn., p. 282:—

"The inducement need not be *expressed*, but may be implied from the conduct of the person in authority, the declarations of the prisoner, or to circumstances of the case."

I have to ask myself whether the nature and conduct of this interview induced circumstances in which the accused spoke the truth (*R. v. Thomas*[3]). Did his replies indicate remorse and penitence, or were they induced from any form of apprehension, from any reason of disinclination to anger his interrogators by adhering to his first denial which was obviously rejected, or even from any desire to terminate a painful interview?

In coming to my decision I have been greatly influenced by the evidence of Conductor Gurusamy. The time taken in the interrogation was some fifteen minutes, but I was not fully satisfied as to when the accused is alleged to have made the confession; it seems probable that it occurred towards the close of the interview.

In the first place the accused denied the crime, but after protracted examination he confessed. Conductor Gurusamy said, in answer to a question on the manner of the accused's replies, that he was hesitating — when questions were put he would think for some time and remain silent; then Mr. Anderson would say "Answer my questions", and the accused would thereupon reply.

Thus it could not be said that it was left to the accused to speak or not (*Roscoe's Criminal Evidence*, 13th ed. p. 37). He was undoubtedly pressed to reply, and his first denial was not accepted. Can it be taken that his subsequent answers contradicting his first denial of the crime, disclose a state of mind free from any persuasion, prompting or consideration?

Had the confession been immediate and spontaneous this question, despite the absence of any form of caution, could hardly have arisen, but here is a man brought before his superiors who decline to take his

first answers and persist until replies are elicited agreeable to the interrogators and perhaps consonant with their own preconceived inclinations, for the complainant had had the prior word.

It may be that the first denial was untrue and the subsequent confession was true, but under the circumstances explained it could never be said to be free and voluntary.

I am forced back to the fundamental principle of criminal law — is there a reasonable doubt in respect of the credibility of a confession elicited after persistent interrogation following an initial denial? I think there is bound to be, and the accused must receive the benefit thereof.

The evidence of the confession to the Assistant Manager Mr. J. Anderson through Conductor Gurusamy is held inadmissible.

Ruling accordingly.

ANYAM & ANOR. v. INTAN.

[A. C. J. (Taylor J.) February 13, 1948]

[Seremban — Civil Appeal No. 4 of 1947]

Probate and Administration Enactment (Cap. 8), s. 184(iii) — Distribution of estate — Adat perpateh — Customary land — Harta pembawa — Distribution Enactment (Cap. 71), s. 2.

This was an appeal against an order of the Collector, Kuala Pilah, in a distribution suit in which the respondent the widow of the deceased applied for transmission of a one-third share in land at Kuala Pilah according to the Muslim Law and the appellants claimed transmission under the *adat perpateh*. The deceased was the member of a tribe but the land was not registered as "Customary Land."

Held: (1) in such cases the Collector should distribute the estate according to the law or custom having the force of law applicable to the deceased and where the deceased was a member of a tribe that law is almost always the *adat;* (2) the absence of the words "Customary Land" does not by itself prove that the land was not "occupied subject to custom" or that it was not ancestral; (3) the declaration of separate property, *harta dapatan* and *harta pembawa* does not affect the classification of such property but is a matter of evidence only and if there is sufficient other evidence that the property is in fact *harta pembawa* or *harta dapatan* it is not necessary to prove that a declaration was made.

CIVIL APPEAL.

Muthu Ramalingam for the appellants.

Respondents in person.

Cur. Adv. Vult.

Taylor J. : — This is an appeal against an Order of the Collector, Kuala Pilah in Distribution Suit No. 64 of 1946 in which Intan, the widow of the deceased, applied for transmission of a 1/3 share in E.M.R. 85, Pilah, according to the Mohammedan law and Anyam and others, his *Waris,* claimed transmission under the *Adat Perpateh.*

The land is clearly proved, by the former title dated 1887 which was exhibited, to have been an ancient ancestral *sawah* of the Tanah Datar tribe. The evidence shows that this ancestral land devolved on Rolan, the mother of the deceased, who had no daughter. She appears to have transferred it to her three sons when she was about to go to Mecca. The *lembaga* of her tribe said that she "empowered" the land to them and that the fact of the transfer was not known to the tribe. If it is a transfer, he says, it should be regarded as for life only. The transfer was not produced but it is said to have been made about 1927. The title has never been inscribed "Customary land" but it is well known that the inscription was often omitted from titles which were in truth ancestral and the Collector rightly held that this omission does not by itself establish that the land was not occupied subject to the custom.

The widow frankly admitted that the land came into the possession of the deceased before her marriage to him and she never at any time claimed that it was *charian laki-bini.* The ground of her claim is that, as she says, her husband told her in his lifetime that it should be transmitted to her and his children. She claims under Mohammedan law because she could not possibly succeed under the *adat.* The Collector has overlooked the fact that she claims not only for herself and her own children but on behalf of his children by a former wife who belong to another tribe and are not in fact living with or maintained by the applicant.

The Collector refers to section 2 of the Distribution Enactment but that is a wholly negative provision and does not affect the question. He has omitted all reference to the really material section — 184 (iii) of the Probate and Administration Enactment — under which he was proceeding and which requires him to distribute the estate according to the law or custom having the force of law applicable to the deceased. Where the deceased was a member of a tribe that law is almost always the *adat.*

I think the Collector misdirected himself in holding that the deceased could not have held the land as *Tanah Pesaka* because he was a male. Prior to the 1st of December, 1926, when the present Customary Tenure Enactment came into force there was nothing to prevent a male from holding ancestral land even if the title was endorsed "customary land". The Enactment of 1909 did not restrict ancestral lands to females and in point of fact some ancestral lands were held by males though perhaps not many. Where a woman has no daughter her sons may inherit ancestral land